

**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

In the Matter of:)

Docket: 06-AFC-6

Application for Certification for the)
Eastshore Energy Center in Hayward)
By Tierra Energy)

Staff Comments on Revised PMPD

October 1, 2008



INTRODUCTION

On June 20, 2008, the Presiding Member of the Committee assigned to the Eastshore Energy Center Application for Certification (AFC) proceeding issued the Presiding Member's Proposed Decision (PMPD). After receiving written comments and holding an evidentiary hearing and Committee conference to receive comments and recommendations regarding the PMPD, the Presiding Member issued a revised PMPD on August 29, 2008. Staff only has minor comments on the revised PMPD, and points out several typographical errors.

Air Quality

First, as noted in our comments on the PMPD, the NO₂ standards that apply to this project are those that are identified in the FSA, not the newer standards that became effective in early 2008. (Bay Area Air Quality Management District Rule 2-1-409.) Moreover, contrary to the statement on page 5 of the Revised PMPD, staff did not provide testimony indicating that the project would comply with the new standard; staff stated that the new standard does not apply to this project. The Revised PMPD should be corrected to reflect this fact. Similarly, Finding and Conclusion 24 on page 156 of the Revised PMPD should be corrected to indicate that staff did not supply testimony demonstrating that the project would comply with the new standard. Finding 24 should clarify that staff's testimony demonstrated that the project would comply with the NO₂ standard in effect at the time the application was determined to be complete.

In addition, while various tables have been modified based on testimony from the applicant, the text, unchanged in the Revised PMPD, still refers to the tables as "Staff's" tables. This is misleading. (See, Air Quality Table 2, page 128, and Table 16, page 140.) We note that other references to these tables include a statement that they have been updated by the applicant's July 21, 2008 testimony. Also, the text introducing the applicant's refined analysis on page 140 of the Revised PMPD should indicate that this analysis used an updated NO₂ background value in identifying the updated impacts. The notes below Table 16 (p. 140) and Table 20 (p. 148) of the Revised PMPD should add Exhibit 58 as a "Source", which is the testimony of Mr. Gregory Darwin. Finally, we note two typographical errors: 1) the footnote on page 140 describes modeling

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provided by the applicant in April/May 2007, but the correct year is 2008; and 2) Table 16 on page 140 of the Revised PMPD identifies the modeled NO₂ 1-hour impact as 157.06 when it should be 157.06.

Public Health

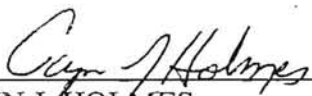
In the area of Public Health, staff notes that we inadvertently overlooked problems in Condition of Certification **PUBLIC HEALTH-1** in our comments on the original PMPD. Two of the three paragraphs entitled "Protocol" are not appropriate. Specifically, the second "protocol" in the Condition requires that the project owner use "OEHHA's more stringent [reference exposure level] REL for acrolein emissions at 0.19 micrograms per cubic meter of air." This is not appropriate because the REL may change in the near future and the health risk assessment (HRA) required pursuant to the Condition would not be prepared for several years. Hence the Revised PMPD should be modified to require that the **current** RELs for all toxic air contaminants be used when preparing the HRA. A second concern is that the third "protocol" requires that data from the March 2008 West Oakland Study be included. This is confusing and contradictory since the Revised PMPD made an express finding that the data compiled by CARB's March 19, 2008, Health Risk Assessment on diesel particulate matter in the Oakland area was not shown to impact Staff's cumulative public health analysis. (Public Health Finding and Conclusion 21.) Moreover, the Revised PMPD offers no guidance as to what data from the study should be included or how it should be used. Staff recommends that this protocol be stricken.

Miscellaneous

On page 389 of the Revised PMPD, the word "public" should be stricken from the second sentence; this appears to be a typographical error.

Date: October 1, 2008

Respectfully submitted,


CARYN J. HOLMES
Staff Counsel IV
California Energy Commission
1516 9th St., MS-14
Sacramento, CA. 95814
Ph: (916) 654-4178
E-mail: cholmes@energy.state.ca.us